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11                   **UNITED STATES DISTRICT COURT**  
12                   **NORTHERN DISTRICT OF CALIFORNIA**  
13                   **SAN FRANCISCO DIVISION**  
14

15                   **IN RE: OPTICAL DISK DRIVE**  
16                   **PRODUCTS ANTITRUST LITIGATION**

17                   **This Document Relates to:**

18                   **ALL ACTIONS**

Case No. M:10-cv-02143 VRW

MDL No. 2143

**CERTAIN INDIRECT-PURCHASER  
PLAINTIFFS' RESPONSE TO UNITED  
STATES' MOTION FOR A LIMITED STAY  
OF DISCOVERY AND JOINDER IN  
DIRECT-PURCHASER PLAINTIFFS'  
OPPOSITION**

Date: June 24, 2010  
Time: 10:00 a.m.  
Place: Courtroom 6, 17th Floor

The Honorable Vaughn R. Walker

1 Indirect-Purchaser Plaintiffs Justus Austin III, Raymond F. Barbush, Aimee Brock, Cullen  
 2 Byrne, Ann Carney, Tina Corse, Thomas Fennesy, Craig P. Kelly, David and Debra Knight,  
 3 Geoffrey Korwan, Bonnie Lockwood, Patrick Piper, Sidney Plitnik, Cynthia R Rall, Richard R. Rall,  
 4 Daniel Riebow, Cynthia Saia, Gregory Sinigiani, Christopher Smith, Williams Craig Stephenson,  
 5 and Frank Warner (“IP Plaintiffs”) hereby join and support Direct-Purchaser Plaintiffs’ Opposition  
 6 to United States’ Motion for A Limited Stay of Discovery being filed on June 3, 2010. IP Plaintiffs  
 7 incorporate and adopt by reference the reasons for the Opposition set forth in the Direct-Purchaser  
 8 Plaintiffs’ brief in all respects.

9 IP Plaintiffs raise the following additional concerns regarding the Government’s proposed  
 10 stay, and respectfully submit that these issues provide additional bases for the rejection of the stay  
 11 requested by the Government.

12 First, the Government’s proposed order appears to limit discovery of ODD purchase and  
 13 sales data from defendants and third parties to aggregated information. *See* Dkt. 68-2 [Proposed]  
 14 Order to Stay Discovery, ¶4b. Second, it restricts discovery of such ODD purchase and sale  
 15 information to sales or purchases made in the United States. *See id.* As set out below, any limitation  
 16 on plaintiffs’ ability to propound formal discovery requests seeking *worldwide, transactional level*  
 17 *data* regarding sales or purchases of ODDs and ODD products by defendants, third parties and/or a  
 18 defendant’s subsidiaries, joint ventures, or affiliates, is unwarranted.

19 Transactional level sales data is routinely produced in antitrust cases and is needed to identify  
 20 third parties from whom relevant information may be sought and by plaintiffs’ experts to analyze  
 21 impact and damages. The Government provides no reason why access to transactional level  
 22 purchase or sales data from Defendants and third parties would impede its investigation in any way.

23 Foreign transactional information is also of substantial importance in this case because a  
 24 significant number of defendants are foreign entities which manufacture their products outside of the  
 25 United States. IP Plaintiffs’ claims are based on allegations of a global conspiracy that affected the  
 26 U.S. market. IP Plaintiffs bought ODDs and ODD products in finished products in the U.S., many  
 27 of which products were manufactured abroad. IP Plaintiffs have a right to prove their case with  
 28 economic analyses that start with the prices charged by defendants and finish with the prices paid by

1 the IP Plaintiffs for finished products in the U.S. The defendants' global sales data is relevant  
 2 because it is where impact originates. For these reasons, foreign transactional level sales data is  
 3 relevant to IP Plaintiffs' estimation of the direct overcharge, impact and damages.

4 Federal courts consistently order defendants to provide discovery concerning non-US market  
 5 data in cases (like here) involving allegations of an international antitrust conspiracy. *See, e.g., In re*  
 6 *Vitamins Antitrust Litig.*, 2001 WL 1049433, at \*11 (D.D.C. June 20, 2010) ("Although [foreign]  
 7 actions may not be admissible to establish damages . . . the information would be relevant to show  
 8 the breadth of the conspiracy, the role that each defendants' executives played in implementing,  
 9 expanding, enforcing and concealing the conspiracy, and how the conspiracy was maintained for the  
 10 length of time alleged."); *see also In re Plastics Additives Antitrust Litig.*, 2004 WL 2743591, at \*14  
 11 (E.D. Pa. Nov. 29, 2004) (ordering production to US plaintiffs of all documents produced to foreign  
 12 antitrust enforcement authorities, regardless of whether they relate to US markets); *In re Intel Corp.*  
 13 *Microprocessor Antitrust Litig.*, 2007 WL 137152, at \*7-11 (D. Del. Jan. 12, 2007) (compelling  
 14 discovery of defendant's conduct in foreign markets, despite dismissal of plaintiff's foreign claims,  
 15 because foreign conduct was also relevant to plaintiff's domestic claims); *Kellam Energy, Inc. v.*  
 16 *Duncan*, 616 F.Supp. 215, 219 (D. Del. 1985) (antitrust case stating that "regardless of how [the]  
 17 geographic market is eventually defined in this action, the boundaries of that market do not set the  
 18 geographic limit of discovery"); *SmithKline Beecham Corp. v. Apotex Corp.*, 2006 WL 279073, at  
 19 \*3 (E.D. Pa. Jan. 31, 2006) ("The fact that the United States is the relevant market in [a] case does  
 20 not necessarily limit discovery to the United States" discovery of foreign activities compelled)  
 21 (citing *U.S. v. Dentsply Int'l, Inc.*, 2000 WL 654286, at \*5 (D.Del. May 10, 2001)).

22 In *In re TFT-LCD (Flat Panel) Antitrust Litigation*, a recent international price-fixing case  
 23 being litigated in this District, the Special Master also ordered that defendants produce non-U.S.  
 24 transactional data. The Order states in relevant part:

25 "The weight of authority, including from the United States Supreme Court, is  
 26 that Defendants should produce transactional data for TFT-LCD sales outside  
 the U.S. for the following reasons:

- 27 a. the information is relevant to both claims and damages;  
 28 b. Discovery should be liberally granted in anti-trust cases;  
 c. The FTAIA Domestic Injury exception applies where the conduct has  
 a direct, substantial and reasonably foreseeable effect on domestic  
 commerce.

1     See *In re TFT-LCD*, Case No. M 07-1827 SI, Order Clarifying Discovery Limits Allowed Under  
2     Court's Stay Order (N.D. Cal. May 15, 2008) (Dkt. #618).

3                 As in *TFT-LCD*, discovery of foreign transactions in the present case should be permitted.  
4     The prices of ODDs and ODD products, the entities to whom defendants sold their products  
5     (especially the sales or purchases involving other defendants), the quantity of their sales or  
6     purchases, and the type of products they were selling and purchasing are all directly relevant as to  
7     Plaintiffs' claims and damages. Discovery of such transactional information would not otherwise  
8     interfere with the Government's ongoing criminal investigation.

9                 For the reasons set forth in the Direct Purchasers' supporting memorandum, and for  
10    additional reasons set out above, IP Plaintiffs respectfully request that the Government's motion be  
11    denied.

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13    Dated: June 3, 2010

Respectfully submitted,

14    By:     /s/ Francis O. Scarpulla

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